IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8263 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMSINGHBHAI LAXMANBHAI TALATIA

Versus

STATE OF GUJARAT

Appearance:

MR CJ VIN for Petitioners

Mr. LR Pujari AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/10/2000

ORAL JUDGEMENT

Learned advocate Mr. Vin is appearing for the petitioner. Learned AGP Mr. Pujari is appearing for the respondents.

Rule. Service of rule has been waived by Mr. Pujari, the learned AGP appearing for the respondents. On the facts and in the circumstances of the case, the matter has been taken up for final hearing today.

Brief facts of the present petition are that the petitioners are the owners of the land bearing survey No. 411 and 413 paiki TP Scheme NO.3, Final Plot NO. 86/1 and 86/2 situated at Rajkot. It is the case of the petitioners that the said land fell within the purview of the provisions of the Urban Land (Ceiling and Regulation) Act and, therefore, declaration under sec.6(1) was filed by the landlords. That the said land was cleared and, thereafter, the revenue department had taken the order of the competent authority in review. That after scrutinising the records, the revenue department didnot find it fit to interfere with the said order. That the Government had also made a declaration that they did not intend to acquire the said land.

It is the case of the petitioners that in the meantime, town planning scheme no. 3 was finalized and that some portion of the impugned plots was acquired for road. After deduction, the petitioners had prepared the layout plans for development to the town planning officer. That the said plan was also approved. The petitioners had, thereafter, approached the respondent no.2 for making necessary mutations qua the land in question and supply copy after due mutations. That the respondent no.2 refused to make the mutations and supply the copy. The petitioners have also filed another petition for another pieces of land bearing final plot no. 85/1 and 85/2 being special civil application no. 973 of 1998 wherein this Court (Coram : M.S.Shah,J.) has passed interim orders in favour of the petitioners and accordingly mutations have been made. The petitioners have prayed for identical reliefs in this petition.

In this petition, the orders passed by the City Survey Superintendent dated 1st March, 2000 is under challenge which is at annexure "E", page 32 of the petition. Under the said order/letter, the City Survey Superintendent, Rajkot has informed one Kishorsinh Jivansinh Gohil in response to his application dated 8.2.2000 that in view of the order of the Collector,Rajkot in Land Revision Case 108(6) Case No. 11/96-97 dated 7.6.97, the land has been considered to be the Government Kharaba and the entry in the record of right has been set aside and in view of that, it has been communicated that the change entry sought to be made vide application under reference cannot be made and,

therefore, the application has been filed.

During the course of hearing, learned advocate Mr. Vin has submitted that the very same order which has been relied upon by the City Survey Superintendent, Rajkot for rejecting the application of the petitioner namely the order of the Collector,Rajkot in Case No. 11-96/97 in exercise of the powers under rule 108 (6) of the Bombay Land Revenue Rules has been set aside by the superior authority namely the additional chief secretary (appeals) revenue department by order dated 31.3.1998 and, therefore, now, the city survey superintendent, Rajkot cannot rely upon the said order of the Collector dated 7th June, 1997 for rejecting the application of the petitioner. He has further submitted that the order passed by the additional chief secretary (appeals) revenue department dated 31st March, 1998 has not been challenged before any higher forum so far and, therefore, now, respondent NO.2 cannot rely upon the order of the collector which has been set aside by the said authority in revision. He has submitted that in view of these facts, respondent NO.2 is required to be directed to make necessary entries in the city survey record qua the land in question namely the land bearing final plot no.86/1 and 86/2 of survey no. 411 and 413 paiki in the city of Rajkot.

As against that, learned AGP Mr. Pujari appearing for the respondent authorities has submitted that if the order of the collector dated 7th June, 1997 has been set aside by the additional secretary (appeals) by order dated 31.3.1998 and if the said order dated 31.3.1998 has not been challenged before any higher forum till this date, then, the respondent no.2 can be directed to make necessary entries in accordance with law.

Having considered the facts and circumstances of the present case and also having considered the submissions made by the learned advocates for the respective parties, as per my view, respondent No.2 is required to be directed to make the entries in accordance with law while quashing and setting aside the order annexure "E" dated 1st March, 2000.

Accordingly, the order date 1st March, 2000 annexure "E" passed by the City Survey Superintendent, Rajkot, respondent No.2 herein is quashed and set aside and the respondent No.2 herein is directed to make necessary entries in the city survey records qua land bearing FP No.86/1 and 86/2 of the survey no. 411 and 413 paiki situated in the city of Rajkot as per the

application submitted by the person concerned within the period of one month from the date of receipt of certified copy of this order. This petition is accordingly allowed. Rule is made absolute accordingly. There shall be no order as to costs.

19.10.2000. (H.K. Rathod,J.)

Vyas